

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION (AKRON)

IN RE:

LINDA S. KRANAK

Debtor

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CASE NO. 20-BK-50629

CHAPTER 7

JUDGE: KOSCHIK

MOTION TO AVOID JUDICIAL LIEN UNDER §522

Now come Debtor, Linda S. Kranak, who humbly objects to a judicial lien against her property and requests this Court for an Order to avoid this same lien. This lien, valued at \$20,068.12, impairs her property exemptions under R.C. §2329.66. This lien stems from a money complaint filed in Summit County Common Pleas Court on June 21, 2016 and may be rightfully avoided under §522(f). A brief memorandum in support of this motion is attached.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

Relevant Facts:

1. Linda Kranak's daughter, Kellie Kranak-Collier, was a college student for many years. According to her LinkedIn profile, she attended three different universities from 2004-2015.
2. In an effort to help her daughter, Linda Kranak co-signed student loans for her.
3. In total, there were four student loans – two with Navient and two with National Collegiate Student Loan Trust.
4. After she left college, Kellie Collier did not see the need to pay on her student loans when they became due. Rather, she burdened her mother with the responsibility.
5. On June 21, 2016, National Collegiate filed two separate lawsuits against Kellie Collier and Linda Kranak, jointly and severally, for non-payment (Summit County CV-2016-06-2771 and CV-2016-06-2775).
6. On November 8, 2016, and June 1, 2017, respectively, judgments were rendered against Linda Kranak in the amounts of \$19,980.70 (2771) and \$20,068.12 (2775), respectively.
7. The \$19,980.70 judgment was recorded as judgment lien JL-2016-9181. Linda Kranak dutifully paid this lien off and it was released on January 23, 2017.
8. The remaining lien for \$20,068.12 has not been paid. Moreover, the two remaining Navient loans are in default and will be addressed in a separate Brunner motion.
9. Linda Kranak is now 63 years old and only has her meager Social Security as a source of income. Her husband, Robert Kranak, is 78 and has terminal health issues. For the Kranaks, paying on the remaining judgment is proving to be a greater and greater hardship for the aging couple.
10. Linda Kranak now requests this court for an Order to avoid this lien under §522(f).

Analysis:

11. “Section 522(f) serves as but one example of Congress having exercised its power to allow the cancellation of a creditor’s *in rem* interest in property by affording debtors the power to avoid judicial liens that impair otherwise valid exemptions.” In Re: Jerew, No. 06-BK-33252, N.D. of Ohio (2009), at ¶20.

12. Bankruptcy Code §522(f)(1)(A) states (in part):

[T]he debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is – a judicial lien

13. The statutory text enumerates three elements to be satisfied for a debtor to avoid a lien under this section:

- (1) it must be a judicial lien;
- (2) the lien must be fixed against an interest of the debtor in property; and
- (3) the lien must impair an exemption to which the debtor would otherwise be entitled.

McCart v. Jordana, 232 B.R. 469, 473 (10th Cir. B.A.P 1999).

14. All three elements are satisfied here:

- (1) This lien is a non-consensual, judicial lien against Linda Kranak, as shown by the Docket Entry for Summit County Common Pleas Court, CV-2016-06-2775, attached as Exhibit A.
- (2) The lien is fixed against the interest of Linda Kranak in her real property, which impairs her exemptions under R.C. §2923.66.
- (3) This judgment impairs the exemptions on her real and personal property.

15. For the above reasons, Debtor Linda Kranak humbly requests this court for an Order to avoid the National Collegiate lien from June 1, 2016 as properly avoidable under §522(f)(1).

Respectfully Submitted,



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Summit County Clerk of Courts

NATIONAL COLLEGIATE STUDENT LOAN TRUST VS KELLIE COLLIER


Case
Number: CV-2016-06-2775

File Date:
06/21/2016

Case Type: OTHER **Judge:** MARY MARGARET
CIVIL ROWLANDS

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02/20/2018	SUMMIT COUNTY CLERK OF COURTS	**CASE COSTED THRU 6/2/17 FOR ORIGINAL COSTS. BILLED D1 & D2 \$170.27 EA. HC	No Image
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03/10/2017	NATIONAL COLLEGIATE STUDENT LOAN TRUST	PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED, AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS HEREBY RENDERED IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT, LINDA KRANAK, IN THE SUM OF \$17,556.52 PLUS ACCRUED INTEREST OF \$2,511.60 FOR A TOTAL JUDGMENT OF \$20,068.12 TOGETHER WITH INTEREST THEREAFTER AT THE RATE OF 3% ON \$17,556.52 FROM THE DATE OF JUDGMENT FROM THE DATE OF JUDGMENT AND COSTS. MMR	View Document
12/27/2016	KRANAK, LINDA	LETTER FROM ANDREW KRANAK, SON OF DEFENDANT, LINDA KRANAK.	View Document
12/27/2016	KRANAK, LINDA	LETTER FROM DEFENDANT, LINDA KRANAK.	View Document
12/27/2016	KRANAK, LINDA	LETTER FROM ROBERT KRANAK, HUSBAND OF DEFENDANT, LINDA KRANAK.	View Document
12/27/2016	KRANAK, LINDA	DEFENDANT'S LINDA KRANAK ANSWER TO COMPLAINT.	View Document
12/07/2016	NATIONAL COLLEGIATE STUDENT LOAN TRUST	COURT GRANTS PLAINTIFF LEAVE TO FILE MOTION FOR SUMMARY JUDGMENT INSTANTER. DEFENDANT RESPONSE DUE WITHIN 30 DAYS FROM THE DATE THIS ORDER IS FILED. MMR	View Document
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